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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 IN THE MATTER OF THE ) NO. CV 16-170-CAS(E)  
12 EXTRADITION OF )  
13 LYUBOMIR MIHAILOV YORDANOV, )  
14 aka "Lyubomire M. Iordanov," ) MEMORANDUM OPINION AND ORDER:  
15 )  
16 ) 1. DENYING FUGITIVE'S MOTION TO  
17 a Fugitive from the ) DISMISS; AND  
18 Government of Bulgaria, )  
19 ) 2. CERTIFYING EXTRADITABILITY  
20 )  
21 \_\_\_\_\_ )  
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18 BACKGROUND

19  
20 The Government of Bulgaria has requested the extradition of  
21 Lyubomir Mihailov Yordanov, also known as Lyubomire M. Iordanov  
22 ("Yordanov"). Yordanov opposes extradition.  
23

24 On December 15, 2015, the Government of the United States  
25 ("Government") filed a sealed "Complaint for Arrest Warrant and  
26 Extradition" pursuant to 18 U.S.C. section 3184 in In the Matter of  
27 the Extradition of Lyubomir Mihailov Yordanov, aka "Lyubomire M.  
28 Iordanov," 15-2388M. Yordanov was arrested in this District on

1 December 18, 2015.

2  
3 On January 8, 2016, the Government filed in the present action:  
4 (1) a Request for Extradition with exhibits ("Request for  
5 Extradition"); and (2) a "Notice to Consolidate" this action with case  
6 number 15-2388M. Also on January 8, 2016, the matter was referred to  
7 the undersigned Magistrate Judge.

8  
9 On July 29, 2016, the Government filed the "United States'  
10 Extradition Memorandum" ("Government's Memorandum"). On October 19,  
11 2016, Yordanov filed "Mr. Yordanov's Brief in Opposition to  
12 Government's Request for Extradition, etc." ("Opposition"). On  
13 October 28, 2016, the Government filed the "United States' Reply in  
14 Support of Extradition Request, etc." ("Reply"). On November 3, 2016,  
15 the Government filed the "United States' Filing of Supplement to  
16 Request for Extradition" ("Government's November 3, 2016 Supplement").

17  
18 On November 7, 2016, Yordanov filed "Mr. Yordanov's Sur-Reply  
19 Brief in Opposition to Government's Request for Extradition and Motion  
20 to Dismiss Request for Extradition" ("Sur-Reply and Motion to  
21 Dismiss"). On November 9, 2016, the Government filed the "United  
22 States' Opposition to Motion to Dismiss Request for Extradition."

23  
24 The Magistrate Judge held an extradition hearing on November 10,  
25 2016.

26  
27 On November 16, 2016, the Government filed the "United States'  
28 Filing of Supplement to Request for Extradition, etc." (Government's

1 November 16, 2016 Supplement"). On December 13, 2016, Yordanov filed  
2 "Mr. Yordanov's Response to Government's Supplement to Request for  
3 Extradition" ("Response to Government's November 16, 2016  
4 Supplement").

5  
6 **YORDANOV'S MOTION TO DISMISS**  
7

8 A criminal charge is pending against Yordanov in the town of  
9 Plovdiv, Bulgaria, charging deceit in violation of section 209(1) of  
10 the Bulgarian Criminal Code, as amended in 1982 and 1983.  
11

12 In support of the Request for Extradition, the Government  
13 initially provided the following translation of section 209(1):  
14

15 Who, with the purpose of obtaining for himself or for  
16 somebody else property benefit [sic], arises or maintains  
17 aberration [sic] in somebody, thus causing him or somebody  
18 else property damage shall be punished by imprisonment from  
19 one to six years.  
20

21 Request for Extradition, Government's Exhibit B, ECF Dkt. No. 10-1, p.  
22 46. In Yordanov's Opposition, Yordanov's argued that this translation  
23 was unintelligible. See Opposition, pp. 5-7. The Government then  
24 attached to its Reply a different, unauthenticated translation of the  
25 statute. Yordanov thereafter sought to dismiss the proceeding on the  
26 grounds that the new translation was untimely and not properly  
27 authenticated. See Sur-Reply and Motion to Dismiss, pp. 2-6.  
28

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1       Following the hearing on November 10, 2016, the Magistrate Judge  
2       issued a Minute Order permitting the Government to file a properly  
3       authenticated, accurate translation of the statute and authorizing  
4       Yordanov to file a response. The Government thereafter filed its  
5       November 16, 2016 Supplement to which was attached a copy of a new  
6       translation of the statute, a sworn certificate of translation and a  
7       cover letter from the director of "International Legal Cooperation and  
8       European Affairs" of the Bulgarian Ministry of Justice bearing the  
9       seal of the Ministry of Justice. See Government's November 16, 2016  
10      Supplement, ECF Dkt. No. 50, Exs. A, B. This translation of section  
11      209(1) reads:

12  
13               A person who for the purpose of acquiring material  
14               benefit for himself or for another evokes or maintains in  
15               somebody a misleading idea, and thereby causes material  
16               damage to that person or to another, shall be punished for  
17               deceit by imprisonment from one to six years.

18  
19      Government's November 16, 2016 Supplement, ECF Dkt. No. 50, Ex. A.  
20      Yordanov continues to object to the Government's submission of the new  
21      translation on procedural grounds. See Response to Government's  
22      November 16, 2016 Supplement, ECF Dkt. No. 52, p. 2.

23  
24               The Court finds that the new translation has been sufficiently  
25               authenticated. See 18 U.S.C. § 3190; Extradition Treaty Between the  
26               Government of the United States and the Government of the Republic of  
27               Bulgaria, signed at Sofia on September 19, 2007, S. Treaty Doc. No.  
28               110-12 (2008) ("Treaty"), Art. 9, Request for Extradition,

Government's Ex. A,, ECF Dkt. No. 10, p. 37 ("Documents that bear the certificate of seal of the Ministry of Justice, or Ministry of Department responsible for foreign affairs, of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization."). The Court also finds that the timing of the presentation and authentication of the new translation is not fatal to the merits of the Request for Extradition. The Treaty does not necessarily require that all documents submitted in support of a request for extradition be submitted at the same time as the request itself. See Treaty, Art. 8, 9, 10, Request for Extradition, Ex. A; 18 U.S.C. §§ 3184, 3190. The Motion to Dismiss is denied.

## **FINDINGS AND CONCLUSIONS RE EXTRADITION**

### **I. Jurisdiction**

This Court has jurisdiction to conduct extradition proceedings pursuant to 18 U.S.C. section 3184, Local Rule 72-1, and General Order No. 05-07 of the United States Court for the Central District of California. The Court has jurisdiction over Yordanov pursuant to 18 U.S.C. section 3184.

### **II. Treaty**

The Treaty is in full force and effect. See Request for Extradition, Government's Ex. A, ECF Dkt. No. 10, pp. 5-48; Declaration of Julie B. Martin, ¶ 3, Government's Exhibit A, ECF Dkt.

1 No. 10, p. 5.

2  
3 **III. Identity**

4  
5 The Lyubomir Mihailov Yordanov appearing before this Court is the  
6 same Lyubomir Mihailov Yordanov sought by the Government of Bulgaria.

7  
8 **IV. Request for Extradition; Procedural Requirements**

9  
10 The Request for Extradition filed with this Court by the  
11 Government of Bulgaria, as augmented by subsequent filings, complies  
12 with the procedural requirements of the Treaty.

13  
14 **V. Charge**

15  
16 The charge of deceit is based on allegations that, from May 2008  
17 until August 28, 2008, in the towns of Plovdiv and Krichim, for the  
18 purpose of obtaining for himself or another a property benefit,  
19 Yordanov allegedly "aroused and sustained deception" in the victim,  
20 Yordan Vasilev Angelov, causing property damage "on a large scale" in  
21 a sum equivalent to \$640,000. Request for Extradition, Government's

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23 ///

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Ex. B, ECF Dkt. No. 10-1, pp. 24, 33, 42.<sup>1</sup> Yordanov allegedly violated Bulgarian Criminal Code section 209(1), which (as previously indicated) provides:

A person who for the purpose of acquiring material benefit for himself or for another evokes or maintains in somebody a misleading idea, and thereby causes material damage to that person or to another, shall be punished for deceit by imprisonment from one to six years.

Government's November 16, 2016 Supplement, ECF Dkt. No. 50, Ex. A. Pursuant to Bulgarian Criminal Code section 210(5), the punishment for "deceit" in Bulgaria is increased to one to eight years if the "caused damage is large in size." Government's Ex. B, ECF Dkt. No. 10-1, p. 46.

#### **VI. Limited Nature of Present Proceedings**

In Vo v. Benov, 447 F.3d 1235 (9th Cir.), cert. denied, 549 U.S. 935 (2006), the Ninth Circuit emphasized the very limited role of the court in extradition proceedings.

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<sup>1</sup> Although the translation of the Pencheva statement describes the charge in terms of Yordanov's having "arisen and maintained aberration" in the victim, the translation of various Bulgarian pretrial orders describe Yordanov as having "aroused and maintained deception" in Angelov. Compare Government's Ex. B, ECF Dkt. No. 10-1, p. 6 with Government's Ex. B, ECF Dkt. No. 10-1 pp. 24 ("Order" dated July 6, 2012), 33 ("Order, etc." dated June 29, 2012), 42 ("Order for the Opening of Pre-Trial Proceedings," dated April 12, 2010).

1           An extradition court - in this case the magistrate  
2       judge-exercises very limited authority in the overall  
3       process of extradition. As we have explained,  
4       "[e]xtradition is a matter of foreign policy entirely within  
5       the discretion of the executive branch, except to the extent  
6       that the statute interposes a judicial function."  
7       [citations]. Extradition from the United States is  
8       initiated when the nation seeking extradition makes a  
9       request directly to the State Department. [citation].  
10      "After the request has been evaluated by the State  
11      Department to determine whether it is within the scope of  
12      the relevant extradition treaty, a United States Attorney  
13      . . . files a complaint in federal district court seeking an  
14      arrest warrant for the person sought to be extradited."  
15      [citation]. Upon the filing of a complaint, a judicial  
16      officer (typically a magistrate judge) issues a warrant for  
17      an individual sought for extradition, provided that an  
18      extradition treaty exists between the United States and the  
19      country seeking extradition and the crime charged is covered  
20      by the treaty. 18 U.S.C. § 3184. After the warrant issues,  
21      the judicial officer conducts a hearing to determine whether  
22      there is "evidence sufficient to sustain the charge under  
23      the provisions of the proper treaty or convention," id., or,  
24      in other words, whether there is probable cause.

25  
26   Id. at 1237.

27   ///

28   ///



1 Thus, in determining whether the crime is extraditable and  
2 whether probable cause exists, the Magistrate Judge "has no  
3 discretionary decision to make." Prasoprat v. Benov, 421 F.3d 1009,  
4 1012 (9th Cir. 2005), cert. denied, 546 U.S. 1171 (2006) (citation and  
5 internal quotations omitted). "If the judge or magistrate judge  
6 concludes that 'the crime is extraditable,' and that 'there is  
7 probable cause to sustain the charge,' the judge or magistrate judge  
8 must certify the extradition." Manta v. Chertoff, 518 F.3d 1134, 1140  
9 (9th Cir. 2008) (citation omitted). "Once a magistrate judge confirms  
10 that an individual is extraditable, it is the Secretary of State,  
11 representing the executive branch, who determines whether to surrender  
12 the fugitive." Blaxland v. Commonwealth Director of Public  
13 Prosecutions, 323 F.3d 1198, 1208 (9th Cir. 2003).

14  
15 **VII. Evidence**

16  
17 **A. Government's Evidence**

18  
19 **1. Prosecutor's Statement**

20  
21 The Government has submitted a certified translation of an  
22 "Information" statement from Plovdiv Public Prosecutor S. Pencheva  
23 addressed to the Bulgaria Supreme Cassation Prosecutor's Office,  
24 International Legal Cooperation Department (Request for Extradition,  
25 Ex. B, ECF Dkt. No. 10-1, pp. 6-9 ("Pencheva Statement")). This  
26 statement contains the following information:

27 ///

28 ///

1           The victim, Yordan Vasilev Angelov, was the sole owner  
2           and manager of "SMM" PLCC, a company engaged in the import  
3           and sale of cars and other motor vehicles. Pencheva  
4           Statement, ECF Dkt. No. 10-1, p. 6. In February 2008,  
5           Angelov met Yordanov through an acquaintance. Id. Yordanov  
6           represented that he imported motor vehicles from the U.S.  
7           and expressed a desire to develop a common business with  
8           Angelov. Id. Yordanov and Angelov entered into an oral  
9           agreement for the import of motor vehicles. Id., pp. 6-7.

10  
11           Initially, Yordanov performed his obligations under the  
12           agreement. Id., p. 7. Yordanov would send invoices to  
13           Angelov describing the characteristics of a particular  
14           vehicle (i.e., brand, model, VIN number), and Angelov  
15           thereafter would transfer the appropriate purchase amount to  
16           a United States bank account. Id. Yordanov then would ship  
17           the purchased car by container to Bulgaria. Id.

18  
19           Commencing in May 2008, Yordanov decided to send  
20           Angelov information concerning vehicles which Yordanov did  
21           not intend to purchase so as to induce Angelov to transfer  
22           money to Yordanov for the allegedly phony purchase. Id.  
23           Yordanov intended to use the transferred money for his own  
24           necessities. Id. In pursuit of this plan, from May 2008  
25           until August 29, 2008, Yordanov sent Angelov invoices for  
26           nine vehicles: six BMWs, two Mercedes and an Infinity FX35.  
27           Id. Angelov transferred to Yordanov's American bank account  
28           a total of \$870,439.43, consisting of \$640,000 in payment

1 for the vehicles plus Yordanov's commission. Id.

2  
3 When the vehicles did not arrive in Bulgaria, Angelov  
4 repeatedly called Yordanov concerning the reasons for the  
5 apparent delay. Id. Initially, Yordanov gave various  
6 reasons, and later he sent Angelov several container numbers  
7 for the containers in which the cars supposedly were to be  
8 loaded. Id. Upon inquiry, Angelov discovered that the  
9 numbered containers actually existed "but were not going to  
10 sail." Id. Angelov attempted to contact Yordanov, but  
11 Yordanov either did not answer the calls or gave various  
12 reasons for discontinuing the conversation. Id.

13  
14 Angelov then flew to the United States, accompanied by  
15 his "best man" Atanas Ivanov Bubarov,<sup>2</sup> in order to find out  
16 why the deliveries had been delayed. Id. Yordanov calmed  
17 Angelov down, assuring him that everything was in order and  
18 that at any moment the vehicles would depart from a port in  
19 New York. Id. When Angelov said he wanted to check  
20 personally on the status of the shipment, Yordanov said that  
21 this was not possible because of the ship's supposedly  
22 imminent departure. Id. After approximately ten days,  
23 Angelov returned to Bulgaria to wait for the deliveries.

24  
25 

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<sup>2</sup> Documents in the record refer to this witness both as  
26 "Bubarov" and "Babarov." See Request for Extradition, Ex. B, ECF  
27 Dkt. No. 10-1, p. 7; Government's November 3, 2016 Supplement,  
28 Ex. A, ECF Dkt. No. 43-1, pp. 2-4; Ex. B, ECF Dkt. No. 43-2, pp.  
2-4. The Court uses the former spelling, which is the spelling  
used in the Pencheva Statement.

1        Id. Angelov discovered a couple of days later that the  
2        vehicles had not been shipped and that, contrary to  
3        Yordanov's representation to Angelov, Yordanov had never  
4        even purchased the vehicles. Id., pp. 7-8.

5  
6        Bubarov thereafter traveled to the United States at the  
7        request of Angelov and met with Yordanov again. Id., p. 8.  
8        Yordanov confessed to Bubarov that Yordanov never had  
9        purchased the vehicles he had invoiced to Angelov, never had  
10       any intention of doing so, had kept the money Angelov had  
11       transferred and had spent this money for Yordanov's  
12       "personal needs." Id. When Bubarov informed Angelov of  
13       this conversation, Angelov contacted the Regional Prosecutor  
14       in Plovdiv. Id.

15  
16                **2. Witness Statements**

17  
18        The Government also has submitted a translated witness statement  
19       from Angelov and two translated witness statements from Bubarov.

20  
21                **a. Angelov's Statement**

22  
23        In Angelov's statement, taken on March 14, 2013, Angelov stated:

24  
25                In 2008, Angelov met Yordanov, who told Angelov that  
26       Yordanov owned a company named "ID Emerson" in California.  
27       Government's November 3, 2016 Supplement, Ex. C, ECF Dkt.  
28       No. 43-3, p. 3. The two agreed that Yordanov would buy cars

1 in the United States and ship them to Angelov's company  
2 "SMM," in return for which Angelov would send payment to  
3 Yordanov's company. Id. Yordanov owned two companies in  
4 Bulgaria which would act as brokers to release the cargo  
5 from the port in Varna in return for a commission from  
6 Angelov. Id.

7  
8 Angelov ordered approximately 20-30 cars per month, by  
9 email, ultimately ordering approximately 100 cars, all in  
10 the upper price range. Id. Yordanov would send invoices by  
11 email, after which Angelov would transfer the money for the  
12 invoiced cars to Yordanov's company bank account. Id.  
13 Yordanov did not buy the cars with his own funds, but with  
14 Angelov's money. Id.

15  
16 Yordanov invoiced Angelov for the nine subject cars,  
17 and Angelov paid Yordanov for these cars. Id. pp. 3-4.  
18 When the cars did not arrive, Angelov spoke to Yordanov on  
19 the phone. Id., p. 4. Yordanov deceived Angelov, saying  
20 that Yordanov needed time to obtain the vehicle documents  
21 and that the procedure would take a month and a half. Id.  
22 After waiting approximately a month, Angelov notified  
23 Yordanov that Angelov was going to come to the United  
24 States. Id.

25  
26 Angelov traveled to the United States with Bubarov in  
27 September or October of 2008. Yordanov told Angelov that  
28 Yordanov had bought the nine cars in New York and the cars

1 were there in containers. Id. When Angelov expressed a  
2 desire to fly to New York to see the cars, Yordanov said  
3 Angelov could not do so because the cars were loaded in  
4 containers. Id. Yordanov gave Angelov the numbers of two  
5 of the containers which Yordanov said contained eight cars.  
6 Yordanov said he had made a down payment for one car which  
7 would be shipped in two weeks. Id. Angelov checked the  
8 shipping company's website and saw two containers  
9 corresponding to the numbers Yordanov had provided. Id.  
10 However, a check a week later showed those containers were  
11 cancelled. Id.

12  
13 Angelov contacted Yordanov, who said he would check  
14 what was happening. Id. Angelov sent Bubarov to the United  
15 States. Id. Yordanov told Bubarov that Yordanov had not  
16 bought the cars but had used the money for his own purposes.  
17 Id. Angelov had sent Yordanov \$640,000 for the missing  
18 shipments. Id. Later, Yordanov told Angelov that Yordanov  
19 would pay Angelov back within six to twelve months. Id.  
20 Yordanov's mother, who is in the United States, sent Angelov  
21 \$2000. Id.

22  
23 **b. Bubarov's Statements**

24  
25 In Bubarov's first statement, taken on April 30, 2010, Bubarov  
26 stated:

27 ///

28 ///

1           Burbarov, Angelov's "best man," shares an office with  
2           Angelov and helps Angelov, an arrangement which ensures that  
3           Burbarov is familiar with everything that happens in  
4           Angelov's office. Government's November 3, 2016 Supplement,  
5           Ex. A, ECF Dkt. No. 43-1, p. 3. In early 2008, an  
6           acquaintance introduced Angelov to Yordanov. Id. Bubarov  
7           later met Yordonov and learned that Yordanov was living and  
8           working in the United States and had offered to start a  
9           business with Angelov importing vehicles from the United  
10          States. Id. As far as Bubarov knew, Yordanov would send an  
11          invoice for a certain car, with the chassis number, and  
12          Angelov then would make a bank transfer based on the  
13          invoice. Id. Bubarov had the impression that the business  
14          was going well. Id.

15  
16          However, eventually there was a significant delay in  
17          shipping a number of expensive cars. Id. Burbarov  
18          accompanied Angelov to the United States because Burbarov  
19          spoke English quite well. Id. In the United States, the  
20          two met Yordanov, who assured them that everything was all  
21          right and that the cars were in stock but that there were  
22          some technical problems which were going to be resolved  
23          soon. Id., pp. 3-4. Bubarov and Angelov spent  
24          approximately a week in Los Angeles but never saw the cars,  
25          which reportedly were being kept at the New York harbor  
26          Id., p. 4. Yordanov persuaded Bubarov and Angelov not to go  
27          to New York. Id.

28       ///

1           Bubarov and Angelov returned to Bulgaria but the cars  
2           never left the United States. Id. Bubarov then returned to  
3           the United States at Angelov's request and met again with  
4           Yordanov. Id. When Bubarov asked Yordanov about the cars,  
5           Yordanov said he had never bought the cars, but then gave no  
6           explanation concerning the money Angelov had sent Yordanov  
7           to purchase the cars. Id. Yordanov began speaking  
8           evasively, promising to return the money he owed. Id.  
9           Bubarov asked Yordanov why Yordanov had issued invoices for  
10          cars Yordanov did not own. Id. Yordanov initially said he  
11          had paid certain amounts for some of the cars but nothing  
12          for others, but finally admitted that he had not paid any  
13          money but had only called the car owners. Id. Yordanov  
14          obviously had obtained information about the cars from  
15          Internet advertisements. Id.

16  
17          Bubarov returned to Bulgaria. Id. Thereafter, Angelov  
18          received a few emails from Yordanov promising to return the  
19          money. Id. Bubarov read some of these emails personally.  
20          Id.

21  
22          In Bubarov's second statement, taken on March 14, 2013, Bubarov  
23          added:

24  
25          After the subject vehicles did not arrive, Bubarov and  
26          Angelov went to Los Angeles and discussed with Yordanov the  
27          fact that vehicles were not arriving. Government's  
28          November 3, 2016 Supplement, Ex. B, ECF Dkt. No. 43-2, p. 3.



1 The two also saw Yordanov's mother, an accountant. Id.  
2 Yordanov confirmed the receipt of money from Angelov for the  
3 nine vehicles in question. Id. Yordanov said the banks  
4 were holding the vehicles' documents for some reason, and  
5 said the vehicles were in containers in New York waiting to  
6 be loaded. Id. Angelov and Bubarov asked to see the  
7 documents and the money, but Yordanov said all documents had  
8 gone with the vehicles. Id. Angelov and Bubarov did not go  
9 to New York because Yordanov said that the vehicles were in  
10 the duty-free zone and could arrive any time. Id. Yordanov  
11 provided the numbers of two or three of the containers. Id.  
12 Bubarov and Angelov checked the numbers on the shipping  
13 company's website and saw that the containers were  
14 certified, but after two days the certifications were  
15 withdrawn. Id. Bubarov and Angelov "started to suspect  
16 that something else was going on." Id.

17  
18 Back in Bulgaria, Bubarov and Angelov waited three  
19 weeks, but no shipments arrived. Id., p. 4. Bubarov then  
20 returned to Los Angeles, where Yordanov said that he had  
21 made a down payment but did not own the nine vehicles. Id.  
22 Yordanov said he had to make some payments but would get the  
23 cars anyway. Id. Yordanov then sent an email saying that  
24 he had not acquired the cars, and that he was going to  
25 refund Angelov's money, somehow, by the end of the year.  
26 Id. The only payment of which Bubarov is aware is a \$2000  
27 payment Yordanov's mother sent to Angelov. Id.

28 ///

1        **B. Yordanov's Evidence**

2  
3        Yordanov has submitted an untranslated letter accompanied by  
4 documents purporting to reflect completed vehicle purchase and  
5 delivery transactions between Yordanov's company and Angelov's company  
6 in 2008, including a bill of lading dated August 12, 2008 (see  
7 Opposition, Ex. A, ECF Dkt. No. 39-1).

8  
9        **C. Admissibility Issues**

10  
11        Yordanov challenges the admissibility of the Pencheva Statement  
12 on the ground that the statement appears to be unsworn and contains  
13 hearsay. However, the Treaty does not require that evidence be sworn.  
14 See Treaty, Art. 8, Request for Extradition, Government's Exhibit A,,  
15 ECF Dkt. No. 10, p. 35.<sup>3</sup> Furthermore, "[t]he usual rules of evidence  
16 do not apply in extradition hearings and, unless the relevant treaty  
17 provides otherwise, the only requirement for evidence is that it has  
18 been authenticated." Manta v. Chertoff, 518 F.3d 1134, 1146-47 (9th  
19 Cir. 2008) (noting "our well-established case law that evidence  
20 offered for extradition purposes need not be made under oath")  
21 (citation omitted); see also Barapind v. Enomoto, 400 F.3d 744, 748  
22 (9th Cir. 2005); Oen Yin-Choy v. Robinson, 858 F.2d 1400, 1406 (9th  
23 Cir. 1988), cert. denied, 492 U.S. 927 (1989); see generally Collins  
24 v. Loisel, 259 U.S. 309, 317 (1922) (unsworn statements of absent

25  
26        <sup>3</sup> Thus, the present case is to be distinguished from In  
27 re Extradition of Platko, 213 F. Supp. 2d 1229, 1237-38 (S.D.  
28 Cal. 2002) in which the applicable treaty (with the Czech  
Republic) expressly required "depositions," i.e., statements  
"made under oath."

1 witnesses admissible, "although they could not have been received  
2 . . . under the law of the state on a preliminary examination");  
3 accord In re Extradition of Luna-Ruiz, 2014 WL 1089134, at \*4 (C.D.  
4 Cal. Mar. 19, 2014).

5  
6 Yordanov's hearsay objection also lacks merit. "[I]t is well-  
7 settled in this circuit that evidence is not incompetent simply  
8 because it is hearsay." Mainero v. Gregg, 164 F.3d 1199, 1206 (9th  
9 Cir. 1999) (citation omitted); In re Extradition of Luna-Ruiz, 2014 WL  
10 1089134, at \*4 ("The extradition judge may consider hearsay evidence,  
11 unsigned translations of a witness's statements, unsworn statements of  
12 absent witnesses, and summaries by the police or prosecutor of a  
13 witness's testimony or statement, provided that those documents are  
14 properly authenticated and . . . the governing extradition treaty does  
15 not require that a witness's statements be executed under oath.")  
16 (citations omitted).

17  
18 Yordanov also contends the evidence of Yordanov's alleged  
19 statement to Bubarov that Yordanov had not bought the vehicles, had no  
20 intention to do so and intended to use the money for his personal  
21 needs assertedly is unreliable because there allegedly is no  
22 indication when this purported conversation occurred. However, the  
23 Government's evidence sufficiently shows the timeline of events. The  
24 Government's evidence shows that the alleged conversation purportedly  
25 occurred during Bubarov's second visit to the United States, which  
26 assertedly occurred approximately three weeks after Bubarov and  
27 Angelov returned from the initial visit to the United States in  
28 September or October of 2008. See Government's November 3, 2016

1 Supplement; Ex. B, ECF Dkt. No. 43-2, p. 4; Ex. C, ECF Dkt. No. 43-3,  
2 p. 4.

3  
4 The Government objects to Yordanov's evidence (Reply, ECK Dkt.  
5 No. 42, pp. 21-23). In extradition proceedings, "evidence that  
6 explains away or completely obliterates probable cause is the only  
7 [defense] evidence admissible at an extradition hearing, whereas  
8 evidence that merely controverts the existence of probable cause, or  
9 raises a defense, is not admissible." Barapind v. Enomoto, 400 F.3d  
10 at 749 (citation and quotations omitted); see also Santos v. Thomas,  
11 830 F.3d 987, 992-93 (9th Cir. 2016) (en banc). An extradition court  
12 generally does not weigh conflicting evidence and make factual  
13 determinations, but determines only whether there is competent  
14 evidence to support the belief that the accused committed the charged  
15 offense. Barapind v Enomoto, 400 F.3d at 749; Quinn v. Robinson, 783  
16 F.2d 776, 815 (9th Cir.), cert. denied, 479 U.S. 882 (1986).

17  
18 The distinction between "explanatory" and "contradictory"  
19 evidence "is easier stated than applied." Santos v. Thomas, 830 F.3d  
20 at 992. Here, the Government's evidence itself suggests a course of  
21 performance indicating that Yordanov shipped some cars to Angelov  
22 pursuant to invoice(s) during the period from May to August 2008. See  
23 Government's November 3, 2016 Supplement, Ex. C, ECF Dkt. No. 43-3, p.  
24 3 (Angelov's statement indicating he allegedly imported approximately  
25 100 cars during this time period). Under these circumstances, the  
26 Court has considered Yordanov's "course of performance" evidence and,  
27 as discussed herein, the Court nevertheless has decided to certify  
28 extraditability. Accordingly, the Court need not and does not

1 adjudicate the merits of the Government's evidentiary objection.

2  
3 **VIII. Extraditability**

4  
5 **A. Dual Criminality**

6  
7 "Under the principle of 'dual criminality,' no offense is  
8 extraditable unless it is criminal in both countries." In the Matter  
9 of the Extradition of Russell, 789 F.2d 801, 803 (9th Cir. 1986)  
10 (citation omitted). "Dual criminality exists if the 'essential  
11 character' of the acts criminalized by the laws of each country are  
12 the same and the laws are 'substantially analogous.'" Manta v.  
13 Chertoff, 518 F.3d at 1141. The scope of liability need not be the  
14 same. Id. In determining whether dual criminality exists, the Court  
15 must consider "the totality of the conduct alleged." Man-Seok Choe v.  
16 Torres, 525 F.3d 733, 737 (9th Cir. 2008), cert. denied, 555 U.S. 1139  
17 (2009) (citation and internal quotations omitted). Neither the names  
18 nor the elements of the offenses need be identical. Id.; Manta v.  
19 Chertoff, 518 F.3d at 1141; Emami v. United States District Court for  
20 the Northern District of California, 834 F.2d 1444, 1450 (9th Cir.  
21 1987) (dual criminality exists if the "substantive conduct each  
22 statute punishes is functionally identical"). "When the laws of both  
23 the requesting and the requested party appear to be directed to the  
24 same basic evil, the statutes are substantially analogous." Man-Seok  
25 Choe v. Torres, 525 F.3d at 738.

26  
27 The Treaty expressly incorporates these principles. The Treaty  
28 defines an "extraditable offense" as an offense punishable under the

1 laws in both States by the deprivation of liberty for a maximum period  
2 of more than a year or by a more severe penalty. Treaty, Art. 2(1);  
3 ECF Dkt. No. 10-1, pp. 30. An offense is extraditable "regardless of  
4 whether the offense is one for which United States federal law  
5 requires the showing of such matters as interstate transportation, or  
6 the use of the mails or of other facilities affecting interstate or  
7 foreign commerce, such matters being merely for the purpose of  
8 establishing jurisdiction in a United States federal court. . . ."  
9 Id., Art 2(3)(b).

10  
11 The Government contends that the dual criminality requirement is  
12 satisfied because the Bulgarian offense assertedly is analogous to the  
13 California crime of grand theft set forth in California Penal Code  
14 section 487(a) and to the federal crime of wire fraud set forth in 18  
15 U.S.C. section 1343.

16  
17 Yordanov advances several arguments against a finding of dual  
18 criminality. Yordanov challenges the alleged extraterritorial reach  
19 of Bulgaria's jurisdiction, contending he was not in Bulgaria at any  
20 relevant time (Opposition, ECF Dkt. No. 39, p. 14). According to  
21 Yordanov, dual criminality is absent because the Government assertedly  
22 has not shown that either California's theft statute or the federal  
23 wire fraud statute has extraterritorial application (id., pp. 14-15).  
24 Yordanov further contends that the dual criminality requirement is not  
25 satisfied because the new translation of Bulgarian Criminal Code  
26 section 209(1) assertedly is vague, the statute allegedly does not  
27 contain a falsity or reliance element, and the evidence assertedly  
28 does not show fraudulent intent or use of the wires (see id., pp. 12-

13; Dkt. No. 42, pp. 8-10).

3           **1. Extraterritorial Jurisdiction**

5           The United States extradition statute provides that a warrant of  
6 apprehension may issue upon a verified complaint charging the fugitive  
7 "with having committed [crimes] within the jurisdiction of any such  
8 foreign government. . . ." 18 U.S.C. § 3143. The Treaty provides:

10           If the offense has been committed outside the territory of  
11 the Requesting State, extradition shall be granted, subject  
12 to the other applicable requirements for extradition, if the  
13 laws of the Requested State provide for the punishment of an  
14 offense committed outside its territory in similar  
15 circumstances. If the laws of the Requested State do not  
16 provide for the punishment of an offense committed outside  
17 its territory in similar circumstances, the executive  
18 authority of the Requested State, at its discretion, may  
19 grant extradition provided that all other applicable  
20 requirements for extradition are met.

22 Treaty, Art 2(4).

24           Yordanov contends that extradition is inappropriate because he  
25 allegedly did not commit any crime within the jurisdiction of  
26 Bulgaria, and because the Government assertedly has not shown that  
27 either California's theft statute or the federal wire fraud statute  
28 provides "for the punishment of an offense committed outside United

1 States territory in similar circumstances."  
2

3 These contentions fail for several reasons. First, it is "not  
4 mandatory" that this Court decide the issue of whether Bulgaria would  
5 have jurisdiction over Yordanov. See Melia v. United States, 667 F.2d  
6 300, 303 (2d Cir. 1981). Nothing suggests that Yordanov will lack the  
7 opportunity to challenge jurisdiction in the Bulgarian courts.  
8

9 Second, contrary to Yordanov's apparent argument, United States  
10 courts have territorial jurisdiction over frauds committed by persons  
11 outside the United States which cause harm within the United States.  
12 In Ex Parte Hammond, 59 F.2d 683 (9th Cir.), cert. denied, 267 U.S.  
13 640 (1932), an extradition case, the Ninth Circuit held that the crime  
14 of obtaining funds by fraudulent misrepresentation is committed at the  
15 place where the victim parts with the victim's money. There, the  
16 fugitive argued that he had made the allegedly false statements to the  
17 Canadian victim in Chicago, and that he had not obtained any money by  
18 false pretenses until the money was deposited into the fugitive's  
19 California bank. The Ninth Circuit rejected these arguments, citing  
20 Ford v. United States, 273 U.S. 593, 620-21 (1927) ("(a)cts done  
21 outside a jurisdiction, but intended to produce and producing  
22 detrimental effects within it, justify a State in punishing the cause  
23 of the harm as if he had been present at the effect, if the State  
24 should succeed in getting him within its power"). Ex Parte Hammond,  
25 59 F.2d at 685-86; see also Case Note, 68 Harv. L. Rev. 1463, 1466  
26 (1955) (in extradition contexts, "it has been uniformly held that the  
27 court of the place where the victims received the fraudulent  
28 communications and parted with the property has territorial



jurisdiction") (citations omitted); People v. Cummings, 123 Cal. 269, 272, 55 P. 898 (1899) (venue proper in county where defendant's fraudulent representations made in another county "had final effect and the offense became complete"); People v. Chapman, 55 Cal. App. 192, 196, 203 P. 126 (1921) ("Without doubt, the crime of obtaining money or property by false pretenses is consummated at the place where the money or property is obtained from the defrauded person, regardless of where the false pretenses may have been made, and therefore the place where the money or property is obtained is the place where, ordinarily, the venue should be laid.") (citations omitted; quoted in Ex Parte Hammond, 59 F.2d at 686); see generally People v. Betts, 34 Cal. 4th 1039, 1046, 23 Cal. Rptr. 3d 138, 103 P.3d 883 (2005) ("a state may exercise jurisdiction over criminal acts that take place outside of the state if the results of the crime are intended to, and do, cause harm within the state") (citations omitted); Hageseth v. Superior Court, 150 Cal. App. 4th 1399, 1414, 59 Cal. Rptr. 3d 385, cert. denied, 545 U.S. 1133 (2005) ("it is not necessary to the 'detrimental effect' theory of extraterritorial jurisdiction that the defendant be physically present in this state during some portion of the time during which his alleged criminal act took place. . . .") (citations omitted).

Here, the Government's evidence indicates that, although Yordanov was in the United States, Yordanov assertedly caused Angelov to part with Angelov's money in Bulgaria. Additionally, the evidence shows that Yordanov used two of his Bulgarian companies to act as brokers, assertedly in furtherance of the fraudulent scheme. United States law would punish a fraud committed in similar circumstances. See United

1 States v. Kazzaz, 592 Fed. App'x 553, 554-55 (9th Cir. 2014), cert.  
 2 denied, 135 S. Ct. 2388 (2015) (sending checks and transmitting an  
 3 electronic payment to United States established sufficient nexus to  
 4 support domestic jurisdiction over mail and wire fraud charges;  
 5 declining to reach issue of extraterritorial application); accord  
 6 People v. Cummings, 123 Cal. at 272; People v. Chapman, 55 Cal. App.  
 7 at 196.

8  
 9 Third, even assuming arguendo that United States law does not  
 10 provide for the punishment of an offense committed outside United  
 11 States territory in "similar circumstances," Yordanov's arguments  
 12 nevertheless would fail. The second sentence of the  
 13 extraterritoriality provision of the Treaty quoted above provides that  
 14 the executive authority of the Requested State has the discretion to  
 15 grant extradition even where "the laws of the Requested State do not  
 16 provide for the punishment of an offense committed outside its  
 17 territory in similar circumstances." Thus, the fact (if it is a fact)  
 18 "[t]hat the offense charged is not a crime in the United States is not  
 19 necessarily a bar to extradition." Matter of Assarsson, 687 F.2d  
 20 1157, 1164-65 (8th Cir. 1982) ("The plain language of this treaty  
 21 indicates that the executive has discretion to extradite for  
 22 extraterritorial offenses.") (citations and footnote omitted); Matter  
 23 of Assarsson, 635 F.2d 1237 (7th Cir. 1980) (same), cert. denied, 451  
 24 U.S. 938 (1981). The determination whether to exercise discretion to  
 25 extradite for an extraterritorial offense is vested in the Executive  
 26 (i.e., the Secretary of State), not this Court. See Matter of  
 27 Assarsson, 687 F.2d at 1164; Matter of Assarsson, 635 F.2d at 1245;  
 28 see also Vo v. Benov, 447 F.3d 1235, 1247 (9th Cir.), cert. denied,

549 U.S. 935 (2006) ("discretionary decisions are within the province of the Secretary of State and not the extradition magistrate") (citation and internal quotations omitted).

## 2. Grand Theft Under California Law

California's theft statute provides that "[e]very person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, . . . or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, . . . is guilty of theft." Cal. Penal Code § 484(a). With exceptions not relevant here, California Penal Code section 487(a) defines grand theft as theft where the value of the property taken exceeds \$950. Promissory fraud, *i.e.*, the making of a promise without the intent to perform, is the equivalent of grand theft by false pretenses. *See People v. Weitz*, 42 Cal. 2d 338, 343, 267 P.2d 295 (1954), *cert. denied*, 347 U.S. 993 (1954) ("a promise made with intent not to perform it is a 'false or fraudulent representation or pretense' within the meaning of the [theft] statute") (citation omitted); *People v. Ashley*, 42 Cal. 2d 246, 262, 267 P.2d 271 (1954) ("a promise made without intention to perform is a misrepresentation of a state of mind, and thus a misrepresentation of existing fact, and is a false pretense within the meaning of section 484 of the Penal Code.") (citations omitted). "[I]n order to support a conviction in such a case 'it must be shown that the defendant made a false pretense or a representation with intent to defraud the owner of his property, and that the owner was in fact defrauded.'" *Id.* at 259 (internal quotations omitted).

1 As indicated above, dual criminality exists if the "substantive  
2 conduct each statute punishes is functionally identical." In Collins  
3 v. Loisel, 259 U.S. 309 (1922), the Government alleged that the  
4 fugitive had obtained a pearl button in India by false pretenses. See  
5 Collins v. Miller, 252 U.S. 364 (1920) (earlier opinion in the same  
6 matter setting forth factual allegations). The fugitive contended  
7 that the transaction was simply a failure to pay a debt. Id. at 366.  
8 On habeas review in the United States Supreme Court, the fugitive  
9 argued that the relevant affidavit charged only "cheating," a crime  
10 purportedly different from theft by false pretenses. Collins v.  
11 Loisel, 259 U.S. at 311. The fugitive argued that proof of "cheating"  
12 required proof of a "promise of future performance which the promisor  
13 does not intend to perform," while proof of "theft by false pretenses"  
14 required proof of a false representation of "things past or present."  
15 Id. (citation omitted). The Supreme Court rejected this argument,  
16 ruling that the offense charged was extraditable because the  
17 "particular act charged [was] criminal in both jurisdictions." Id. at  
18 312.

19  
20 Similarly, the act charged herein, an allegedly false promise to  
21 ship vehicles, is criminal in both Bulgaria and California. The Court  
22 rejects Yordanov's argument that the phrase in the Bulgarian deceit  
23 statute "evokes or maintains in somebody a misleading idea" is  
24 impermissibly vague. See Emami v. United States District Court for  
25 the Northern District of California, 834 F.2d 1444, 1449-50 (9th Cir.  
26 1987) (deeming to be an extraditable offense a charge under a German  
27 statute providing that a person "who damages the property of another  
28 person by producing or maintaining an error through fraudulent

1 misrepresentation or by distortion or suppression of true facts, with  
2 the intent to obtain an illegal pecuniary benefit for himself or a  
3 third person . . ." is guilty of fraud). Yordanov also argues that  
4 section 209(1) appears to reach conduct not covered under United  
5 States statutes, contending that the Bulgarian statute does not appear  
6 to require proof of falsity, reliance or intent to harm. To the  
7 contrary: the statutory phrase "for the purpose of acquiring material  
8 benefit for himself . . . evokes or maintains in somebody a misleading  
9 idea" denotes falsity; the statutory phrase "thereby causes material  
10 damage to that person" denotes reliance; and the combination of these  
11 two statutory phrases effectively denotes intent to harm.

12  
13 Yordanov also contends that dual criminality does not exist  
14 because the evidence allegedly does not show he intended to defraud  
15 and harm Angelov (Response, ECF Dkt. No. 52, pp. 8-10). See Manta v.  
16 Chertoff, 518 F.3d 1134, 1142 (9th Cir. 2008) (proper to consider  
17 evidence of intent to defraud "as part of our dual criminality  
18 analysis"). Yordanov argues that the evidence shows only a breach of  
19 contract, i.e., a failure to deliver the cars, coupled with an alleged  
20 promise to return Angelov's money.

21  
22 As indicated above, under California law, a promise of future  
23 conduct constitutes fraud if made without a present intent to perform.  
24 See People v. Ashley, 42 Cal. 2d at 263-64; People v. Marghzar, 192  
25 Cal. App. 3d 1129, 1140, 239 Cal. Rptr. 130 (1987). While the mere  
26 failure to perform a promise is not alone sufficient to prove  
27 fraudulent intent, the requisite intent may be inferred from all the  
28 circumstances. See Manta v. Chertoff, 518 F.3d at 1142 (fraudulent

1 intent of extraditee could be shown by circumstantial evidence); Oen  
2 Yin-Choy v. Robinson, 858 F.2d 1400, 1407 (9th Cir. 1988), cert.  
3 denied, 492 U.S. 927 (1989) (extraditee's fraudulent intent could be  
4 inferred from alleged transactions and the results thereof); People  
5 v. Christenbery, 167 Cal. App. 2d 751, 755, 334 P.2d 978 (1959)  
6 (evidence that defendant promised to deliver a car to the victim when  
7 he knew he could not procure the car was sufficient to show fraudulent  
8 intent). Although the evidence suggests that Yordanov initially may  
9 have performed his alleged contractual obligations to ship certain  
10 other vehicles, the Government's evidence also shows that:  
11 (1) Yordanov did not ship nine vehicles for which Angelov had sent  
12 Yordanov money; (2) when Angelov assertedly came to this country to  
13 discuss the missing shipments, Yordanov, knowing he had not purchased  
14 the subject vehicles, allegedly provided continuing, false assurances  
15 of performance; and (3) Yordanov later told Bubarov that Yordanov had  
16 not purchased the subject vehicles and that Yordanov had used the  
17 money obtained from Angelov for Yordanov's own purposes.<sup>4</sup> Although  
18 Yordanov points to evidence allegedly showing that Yordanov  
19 purportedly later promised to repay Angelov and sent Angelov \$2000,

---

21 <sup>4</sup> Contrary to Yordanov's assertion, the witness  
22 statements do not necessarily contradict the relevant statements  
23 in the Pencheva Statement. As indicated above, the Pencheva  
24 Statement relates that Bubarov said Yordanov told Bubarov that  
25 Yordanov had not purchased the nine vehicles but rather had used  
26 Angelov's money for Yordanov's personal expenses. While  
27 Bubarov's statements do not contain some of this specific  
28 information, Angelov's statement does indicate that Bubarov told  
Angelov that Yordanov had said he used the money "for his own  
purposes." The fact that both Bubarov and Angelov related in  
their statements that Yordanov purportedly promised to pay the  
money back does not contradict the statements that Yordanov told  
Bubarov he had used the money "for his own purposes."

1 the Government's evidence, if credited, could support the inference  
2 that Yordanov made false promises of performance with respect to the  
3 subject vehicles. See People v. Christenbery, 167 Cal. App. 2d at  
4 755; see also People v. Wieger, 100 Cal. 352, 357, 34 P. 826 (1893)  
5 ("Neither the promise to repay, nor the intention to do so, will  
6 deprive the false and fraudulent act in obtaining it of its  
7 criminality. The offense is complete when the property or money has  
8 been obtained by such means, and would not be purged by subsequent  
9 restoration or repayment.") (citations omitted); People v. Silver, 47  
10 Cal. App. 3d 837, 845-46, 121 Cal. Rptr. 153 (1975) (same); United  
11 States v. Treadwell, 593 F.3d 990, 997 (9th Cir.), cert. denied, 562  
12 U.S. 916, 973 (2010) ("While an honest, good-faith belief in the truth  
13 of the misrepresentations may negate intent to defraud, a good-faith  
14 belief that the victim will be repaid and will sustain no loss is no  
15 defense at all.") (citation and internal quotations omitted).

16  
17 The Court concludes that Yordanov's alleged acts are criminal in  
18 both Bulgaria and California. As to the remaining issue of  
19 punishment, the Treaty defines an "extraditable offense" to mean an  
20 offense punishable under the laws in both States by deprivation of  
21 liberty for a maximum period of more than a year or by a more severe  
22 penalty. Treaty, Art. 2(1), Request for Extradition, Government's Ex.  
23 A, ECF Dkt. No. 10, p. 30 (emphasis added). In California, the taking  
24 of property of a value exceeding \$950 is grand theft. Cal. Penal Code  
25 § 487(a). The punishment for grand theft in California is  
26 imprisonment in the county jail not exceeding one year, or pursuant to  
27 California Penal Code section 1170(h), or a fine not exceeding \$5000  
28 or both the fine and imprisonment. Cal. Penal Code § 489 (emphasis

1 added).<sup>5</sup> Section 1170(h), part of California's 2001 Realignment  
 2 legislation (inter alia providing for the retention of certain classes  
 3 of convicted inmates in jail custody), provides generally that a  
 4 felony where the term is not specified in the underlying offense shall  
 5 be punishable by a county jail term of 16 months, two or three years,  
 6 and otherwise by imprisonment in the county jail for the term  
 7 described in the underlying offense. Furthermore, California Penal  
 8 Code section 12022.6(a)(2) authorizes a sentence enhancement of two  
 9 years for the taking of property in the commission or attempted  
 10 commission of a felony where the amount of the loss exceeds \$200,000.  
 11 For purposes of the dual criminality requirement, the court may  
 12 consider sentence enhancements. See, e.g., Joseph v. Hoover, 254 F.  
 13 Supp. 2d 595, 599-600 (D.V.I. 2003). Here, the amount of the alleged  
 14 loss substantially exceeds \$200,000. Therefore, the offense of grand  
 15 theft in the sum alleged in this case is punishable under the laws of  
 16 both Bulgaria and California by deprivation of liberty for a maximum  
 17 period of more than a year. Dual criminality is established with  
 18 respect to California's theft statute.

### 19 20 **3. Wire Fraud Under Federal Law**

21  
22 The federal wire fraud statute proscribes obtaining money or  
 23 property "by means of false or fraudulent pretenses, representations,  
 24 or promises. . . ." See 18 U.S.C. § 1343. The Ninth Circuit has held

---

25  
26  
27 <sup>5</sup> Thus, grand theft is a "wobbler" which is a felony at  
 28 the time of commission and which remains a felony until  
 sentencing. See People v. Valenzuela, 5 Cal. App. 5th 449, 452-  
 53, 209 Cal. Rptr. 3d 860 (2016).



1 that, for purposes of the dual criminality requirement, fraud by false  
2 pretenses "is criminal in the United States under laws punishing mail  
3 and wire fraud." Manta v. Chertoff, 518 F.3d at 1141. Contrary to  
4 Yordanov's apparent argument (see Opposition, p. 8), the federal  
5 jurisdictional requirements of use of the mail or electronic  
6 communications do not constitute the essential elements of the fraud  
7 offense, and the absence of these elements in the definition of the  
8 foreign crime does not defeat a finding of dual criminality. See  
9 Emami v. United States District Court for the Northern District of  
10 California, 834 F.2d at 1450; In re Extradition of Mathison, 974 F.  
11 Supp. 2d 1296, 1312-13 (D. Or. 2013). Moreover, as indicated above,  
12 the Treaty expressly provides that an offense is considered an  
13 extraditable offense "regardless of whether the offense is one for  
14 which United States federal law requires the showing of such matters  
15 as interstate transportation, or the use of the mails or of other  
16 facilities affecting interstate or foreign commerce, such matters  
17 being merely for the purpose of establishing jurisdiction in a United  
18 States federal court. . . ." Treaty, Art. 2(3)(b), ECF Dkt. No. 10,  
19 p. 30) (emphasis added). In any event, the evidence shows Angelov  
20 sent money to Yordanov via wire transfers. Finally, the severity of  
21 the punishment for federal wire fraud easily meets the dual  
22 criminality requirement. See 18 U.S.C. § 1343 ("shall be fined under  
23 this title or imprisoned not more than 20 years, or both"). Dual  
24 criminality is established with respect to the federal wire fraud  
25 statute.

26 ///

27 ///

28 ///

1                   **4. Conclusion**

2

3           For the foregoing reasons, the Court finds that the charged

4 offense is an extraditable offense under the Treaty and the dual

5 criminality requirement is satisfied.

6

7           **IX. Probable Cause Determination**

8

9           "An extradition proceeding is not a trial; the relevant

10 determination is confined to whether a prima facie case of guilt

11 exists that is sufficient to make it proper to hold the extraditee for

12 trial." Emami v. United States District Court for the Northern

13 District of California, 834 F.2d at 1452. "The function of the

14 committing magistrate is to determine whether there is competent

15 evidence to justify holding the accused to await trial, and not to

16 determine whether the evidence is sufficient to justify a conviction."

17 Collins v. Loisel, 259 U.S. 309, 316 (1922); Barapind v. Enomoto, 400

18 F.3d 744, 752 (9th Cir. 2005) (citation and quotations omitted). An

19 extradition proceeding thus "makes no determination of guilt or

20 innocence," but is "designed only to trigger the start of criminal

21 proceedings against an accused," and "guilt remains to be determined

22 in the courts of the demanding country." Sainez v. Venables, 588 F.3d

23 713, 717 (9th Cir. 2009), cert. denied, 560 U.S. 958 (2010) (citation

24 and internal quotations omitted). The country seeking extradition

25 need not produce all of its evidence, and the Magistrate Judge does

26 not determine whether there exists sufficient evidence to convict.

27 Id. at 717; Quinn v. Robinson, 783 F.2d 776, 815 n.41 (9th Cir.),

28 cert. denied, 479 U.S. 882 (1986) (noting "well-established rule that

1 extradition proceedings are not to be converted into a dress rehearsal  
2 for a trial") (citation and internal quotations omitted). "[T]he  
3 magistrate's function is to determine whether there is any evidence  
4 sufficient to establish reasonable or probable cause." Sainez v.  
5 Venables, 588 F.3d at 717 (citation, internal quotations and brackets  
6 omitted).

7  
8 Yordanov contends the evidence shows nothing more than a business  
9 dispute, emphasizing Yordanov's alleged intent to repay Angelov.  
10 However, for the reasons discussed above, the evidence establishes  
11 probable cause sufficient to support extradition. The evidence that  
12 the parties engaged in a course of dealing during which Yordanov  
13 shipped some vehicles in return for Angelov's payments does not  
14 foreclose a fraud prosecution based on other evidence that Yordanov:  
15 promised to purchase and ship the nine subject vehicles; received the  
16 money to do so; failed to do so; made false representations that he  
17 had done so; made false assurances that the vehicles were in  
18 containers in New York ready for shipment; and made false  
19 representations that he would see to it that the cars were shipped.  
20 Furthermore, there is evidence that Yordanov used Angelov's money for  
21 Yordanov's own purposes and then lied about it. Fraudulent intent  
22 reasonably may be inferred from the circumstances presented. As  
23 indicated above, Yordanov's alleged promise to repay Angelov does not  
24 vitiate the evidence of fraud. The credibility of the witnesses  
25 against Yordanov presents a matter for trial in Bulgaria because the  
26 reasons suggested by Yordanov to doubt the credibility of these  
27 witnesses do not "completely obliterate the evidence of probable  
28 cause." See Man-Seok Choe v. Torres, 525 F.3d 733, 740 (9th Cir.

1 2008), cert. denied, 555 U.S. 1139 (2009) (witness' alleged lack of  
2 credibility was "merely a weakness" in the Government's case, and did  
3 not "completely obliterate the evidence of probable cause") (citations  
4 and quotations omitted); Barapind v. Enomoto, 400 F.3d at 749-50  
5 (same); Shapiro v. Ferrandina, 478 F.2d 894, 905 (2d Cir.), cert.  
6 dism'd, 414 U.S. 884 (1973) (evidence bearing on the credibility of a  
7 witness' inculpatory statement and on whether the accused actually  
8 uttered certain statements was inadmissible in extradition proceeding;  
9 that evidence "would in no way 'explain' [or] 'obliterate' . . . the  
10 government's evidence, but would only pose a conflict of credibility"  
11 which "should properly await trial in Israel.") (Friendly, J.). In  
12 making a probable cause determination, the Court does not weigh  
13 conflicting evidence and make factual determinations, but determines  
14 only whether there is competent evidence to support the belief that  
15 the accused committed the charged offense. Quinn v. Robinson, 783  
16 F.3d at 815. The Court finds that the evidence before the Court  
17 establishes probable cause to believe that Yordanov committed the  
18 crime charged against him.

19  
20 **ORDERS AND CERTIFICATION**  
21

22 The Motion to Dismiss is denied.  
23

24 Based on the above findings, and pursuant to 18 U.S.C. section  
25 3184, this Court certifies that it has found Lyobomir Mihailov  
26 Yordanov extraditable to Bulgaria with respect to the charge pending  
27 against him in Bulgaria.

28 ///

1 A warrant may issue for the surrender of Lyubomir Mihailov  
2 Yordanov upon the requisition of the proper authorities of the  
3 Government of Bulgaria, according to the terms of the Treaty.  
4

5 IT IS FURTHER ORDERED that Lyubomir Mihailov Yordanov shall  
6 remain committed to the custody of the United States Marshal, to be  
7 confined without bail until he is surrendered to the Government of  
8 Bulgaria pursuant to the applicable provisions of the Treaty.  
9

10 IT IS FURTHER ORDERED that the attorney for the United States  
11 forthwith shall obtain transcripts of all proceedings before this  
12 Court and deliver those transcripts to the Clerk of the Court. The  
13 Clerk of the Court shall forward to the Secretary of State a copy of  
14 this Order, together with the transcripts and copies of documents on  
15 file herein. The Clerk of the Court also shall file herein a copy of  
16 the transcripts of all proceedings before this Court.  
17

18 IT IS SO ORDERED.  
19

20 DATED: January 18, 2017.  
21  
22

23 \_\_\_\_\_  
24 /s/  
25 CHARLES F. EICK  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28